

CCRB INVESTIGATIVE RECOMMENDATION

| | | | | | |
|---|-------------------------------------|---------------------------|---|---|--|
| Investigator: Rosemary Espinal | Team: Team # 2 | CCRB Case #: 201104966 | <input checked="" type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input checked="" type="checkbox"/> Injury |
| Incident Date(s) Wednesday, 04/06/2011 1:30 PM | Location of Incident: § 87(2)(b) | Precinct: 43 | 18 Mo. SOL 10/6/2012 | EO SOL 10/6/2012 | |
| Date/Time CV Reported | CV Reported At: IAB | How CV Reported: Phone | Date/Time Received at CCRB Wed, 04/13/2011 2:59 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------------|--------------|
| § 87(2)(b) | § 87(2)(b) | § 87(2)(b) |
| § 87(2)(b) | § 87(2)(b) | § 87(2)(b) |
| § 87(2)(b) | § 87(2)(b) | § 87(2)(b) |
| § 87(2)(b) | § 87(2)(b) | § 87(2)(b) |

| Witness(es) | Home Address |
|-------------|--------------|
| § 87(2)(b) | § 87(2)(b) |
| § 87(2)(b) | § 87(2)(b) |

| Subject Officer(s) | Shield | TaxID | Command |
|----------------------------|--------|--------|---------|
| 1. POF Jennifer Frauenberg | 23751 | 945735 | 043 PCT |
| 2. SGT Carlos Fabara | 01279 | 922317 | PBBX |
| 3. POF Denise Keating | 08740 | 947785 | 043 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|---------------------------|--|-----------------------------|
| A.SGT Carlos Fabara | Force: Sgt. Carlos Fabara used a chokehold against § 87(2)(b) | § 87(2)(b) |
| B.POF Jennifer Frauenberg | Force: PO Jennifer Frauenberg struck § 87(2)(b) with a flashlight. | § 87(2)(b) |
| C.POF Denise Keating | Discourtesy: PO Denise Keating spoke obscenely and/or rudely to § 87(2)(b) | § 87(2)(b) |
| D.SGT Carlos Fabara | Discourtesy: Sgt. Carlos Fabara spoke obscenely and/or rudely to § 87(2)(b) and § 87(2)(b) | § 87(2)(b) |
| E.POF Denise Keating | Discourtesy: PO Denise Keating spoke obscenely and/or rudely to § 87(2)(b) | § 87(2)(b) |
| F.SGT Carlos Fabara | Force: Sgt. Carlos Fabara used pepper spray against § 87(2)(b) | § 87(2)(b) |
| G.SGT Carlos Fabara | Force: Sgt. Carlos Fabara used physical force against § 87(2)(b) | § 87(2)(b) |
| H.POF Denise Keating | Force: PO Denise Keating struck § 87(2)(b) with an asp. | § 87(2)(b) |
| I.POF Jennifer Frauenberg | Discourtesy: PO Jennifer Frauenberg spoke obscenely and/or rudely to § 87(2)(b) | § 87(2)(b) |
| J.SGT Carlos Fabara | Abuse: Sgt. Carlos Fabara refused to provide his name and shield number to § 87(2)(b) | § 87(2)(b) |
| K.POF Denise Keating | Abuse: PO Denise Keating refused to provide her name and shield number to § 87(2)(b) | § 87(2)(b) |

Case Summary

On April 13, 2011, § 87(2)(b) called the Internal Affairs Bureau and filed a complaint on behalf of her friend § 87(2)(b) (IAB log # 11-16721). Her complaint was forwarded to the CCRB on April 19, 2011. § 87(2)(b) did not witness the incident.

On April 6, 2011, at approximately 4:00 p.m., Sgt. Carlos Fabara, and Officers Denise Keating and Jennifer Frauenberg, arrested § 87(2)(b) and § 87(2)(b) in front of § 87(2)(b) in the Bronx. The following allegations resulted:

- **Allegation A – Force: Sgt. Carlos Fabara used a chokehold against** § 87(2)(b) § 87(2)(b), § 87(2)(g)
- **Allegation B – Force: PO Jennifer Frauenberg struck** § 87(2)(b) **with a flashlight.** § 87(2)(b), § 87(2)(g)
- **Allegation C – Discourtesy: PO Denise Keating spoke obscenely and/or rudely to** § 87(2)(b) § 87(2)(b), § 87(2)(g)
- **Allegation D – Discourtesy: Sgt. Carlos Fabara spoke obscenely and/or rudely to** § 87(2)(b) **and** § 87(2)(b)
- **Allegation E – Discourtesy: PO Denise Keating spoke obscenely and/or rudely to** § 87(2)(b) § 87(2)(b), § 87(2)(g)
- **Allegation F – Force: Sgt. Carlos Fabara used pepper spray against** § 87(2)(b) § 87(2)(b), § 87(2)(g)
- **Allegation G – Force: Sgt. Carlos Fabara used physical force against** § 87(2)(b)
- **Allegation H – Force: PO Denise Keating struck** § 87(2)(b) **with an asp.** Sgt. § 87(2)(b), § 87(2)(g)
- **Allegation I – Discourtesy: PO Jennifer Frauenberg spoke obscenely and/or rudely to** § 87(2)(b) § 87(2)(b), § 87(2)(g)
- **Allegation J – Abuse of Authority: Sgt. Carlos Fabara refused to provide his name and/or shield number to** § 87(2)(b)
- **Allegation K – Abuse of Authority: PO Denise Keating refused to provide her name and/or shield number to** § 87(2)(b) § 87(2)(g)

Results of Investigation

Civilian Statement(s)

Victim: § 87(2)(b)

- § 87(2)(b)

CCRB Testimony

§ 87(2)(b) was interviewed at the CCRB on April 25, 2011 (encl. 13A-H). On April 6, 2011, at approximately 4:00 p.m., police were called regarding two young males who were on top of a roof at § 87(2)(b) in the Bronx. Approximately four police officers identified through the investigation as Sgt. Fabara, PO Frauenberg, PO Keating, and PO Lenin Garcia, responded and arrested the two males for burglary.

PO Frauenberg approached § 87(2)(b) and his friends and told them to go inside their house. Since § 87(2)(b) was already in his front yard, he disregarded PO Frauenberg's orders. Moments later, PO Frauenberg approached § 87(2)(b) and asked him again to go inside the house. § 87(2)(b) refused. PO Frauenberg then asked § 87(2)(b) how old he was. When § 87(2)(b) responded he was § 87(2)(b)-old, PO Frauenberg told him he was old enough to be arrested.

Sgt. Carlos Fabara, identified through the officers' statements and § 87(2)(b)'s description of him, approached to assist PO Frauenberg in handcuffing § 87(2)(b) held on to the front gate of his house and refused to be handcuffed. Sgt. Fabara wrapped his arm around § 87(2)(b)'s neck and held him in a chokehold. PO Frauenberg struck § 87(2)(b) left hand with a flashlight approximately five times so that § 87(2)(b) could let go of the gate. § 87(2)(b) could not breathe as a result of the chokehold so he let go of the gate. Sgt. Fabara placed § 87(2)(b) on the ground and placed one knee on his back. PO Frauenberg handcuffed § 87(2)(b) sustained a bruise to his left hand. § 87(2)(b) and his friends were not yelling or doing anything prior to the officers' approach.

§ 87(2)(b) arrived as § 87(2)(b) was being arrested. He asked what was happening and told the officers that what they were doing to § 87(2)(b) was not right. § 87(2)(b)'s mother, § 87(2)(b) arrived in her vehicle at that point and took § 87(2)(b) with her to their house located at § 87(2)(b) § 87(2)(b) and § 87(2)(b) went inside the house and locked the door. § 87(2)(b) came back out of the house to get her grandchildren who were still in her vehicle. As § 87(2)(b) came out, PO Frauenberg and Sgt. Fabara entered her front yard. § 87(2)(b) did not see what happened after that since he was placed in a police car. No other officer had physical contact with § 87(2)(b) during this incident.

Victim: § 87(2)(b)

- § 87(2)(b)

CCRB Testimony

§ 87(2)(b) was interviewed at the CCRB on April 25, 2011 (encl. 15A-E). His statement is consistent with § 87(2)(b)'s statement with the following exceptions. The officers ordered § 87(2)(b) and the other teens to disperse. § 87(2)(b) went home and dropped off his book bag. However, he came back outside and approached § 87(2)(b) as he

was getting arrested. § 87(2)(b) asked what happened but did not curse. PO Keating asked § 87(2)(b) to get “the fuck” back then pushed him.

Sgt. Fabara and PO Keating entered the front yard of § 87(2)(b)'s house. They approached § 87(2)(b) who was standing by the front door. § 87(2)(b) had gone inside the house already, but remained in the vestibule with the door ajar. Sgt. Fabara pushed § 87(2)(b) away from the front door and told her, “Go bitch. Get the fuck off.” § 87(2)(b) came out of the house to assist § 87(2)(b). PO Keating pepper sprayed § 87(2)(b) in the face.

Sgt. Fabara punched § 87(2)(b) once on his chin and seven times on the right side of his face. Sgt. Fabara placed him on the ground and handcuffed him. Sgt. Fabara asked § 87(2)(b) while he was on the ground whether he would respect him now and called him a “little motherfucker.” § 87(2)(b) was struck three times with an asp on the leg, however, he did not see who struck him since his eyes were closed as a result of the pepper spray. § 87(2)(b) was bleeding from his mouth and nose. When § 87(2)(b) was in the police vehicle, he asked for water to rinse his face. Sgt. Fabara told him to “shut the fuck up.” § 87(2)(b) sustained bruises on his face and leg.

On § 87(2)(b), § 87(2)(b) received medical care for pain and bruises that resulted from this incident at § 87(2)(b) Hospital.

Complainant/victim: § 87(2)(b)

- § 87(2)(b)

CCRB Testimony

§ 87(2)(b) was interviewed at the CCRB on April 25, 2011 (encl. 14A-F). Her statement is consistent with the above statements with the following exceptions. When § 87(2)(b) arrived, she saw § 87(2)(b) and several of § 87(2)(b)'s friends yelling at the officers who were arresting § 87(2)(b). § 87(2)(b) had to drag § 87(2)(b) home since he did not want to go voluntarily. In front of § 87(2)(b)'s home, § 87(2)(b) pushed Sgt. Fabara's hand away and told him not to put his hands on her when he tried to move her away from the front door as he tried to get to § 87(2)(b) who was standing in the vestibule. § 87(2)(b) told the officers they were not supposed to trespass into her house.

Sgt. Fabara allegedly told § 87(2)(b) “shut the fuck up bitch” and pushed her to the side. PO Keating called § 87(2)(b) a “bitch” and pushed her to the side. PO Frauenberg held § 87(2)(b) while § 87(2)(b) was getting arrested. § 87(2)(b) yelled “what the fuck.” PO Frauenberg told § 87(2)(b) that if she did not “shut the fuck up” she would be arrested. PO Keating took her asp out and struck § 87(2)(b) several times on his right leg. § 87(2)(b) asked Sgt. Fabara what he had done to § 87(2)(b) and he responded, “shut the fuck up.” § 87(2)(b) requested PO Keating and Sgt. Fabara's name and shield numbers but they refused to provide them. Sgt. Fabara slammed § 87(2)(b) against her vehicle and arrested her. § 87(2)(b) and § 87(2)(b) went to § 87(2)(b) Hospital on § 87(2)(b) as a result of the incident.

Witness: § 87(2)(b)

- § 87(2)(b)

CCRB Testimony

§ 87(2)(b) was interviewed at the CCRB on June 7, 2011 (encl. 16A-D). His statement was consistent with the above civilian statements with the following exceptions. § 87(2)(b) was observing the incident from his front yard, which is located next to § 87(2)(b)'s house. PO

Frauenberg took her asp out and told § 87(2)(b) that if he did not go inside the house, he would be arrested. § 87(2)(b) said he was already inside his house.

PO2, who was described as an unidentified Hispanic male, standing 5'7" tall, who weighed 180 lbs., came over and wrapped one arm around § 87(2)(b)'s throat and tried to pull him off the fence.

§ 87(2)(b) approached from his front yard and asked why "the fuck" § 87(2)(b) was getting arrested. Sgt. Fabara told § 87(2)(b) to mind his business and go home. § 87(2)(b) pounded his chest and asked Sgt. Fabara if he would hit him too. When the officers went over to § 87(2)(b)'s residence to arrest § 87(2)(b), § 87(2)(b) went there too. § 87(2)(b) told the officers that there was no need to escalate the situation. Sgt. Fabara told § 87(2)(b) to get "the fuck" away from the door, and told her "bitch, we are going to take care of this."

When § 87(2)(b) exited from his house, Sgt. Fabara pulled him and they fell to the ground. § 87(2)(b) told Sgt. Fabara to get "the fuck" off of him. Sgt. Fabara punched § 87(2)(b) in the face three times, then punched his ribs multiple times. Sgt. Fabara struck § 87(2)(b) with his asp on the legs but § 87(2)(b) did not know how many times. Sgt. Fabara handcuffed § 87(2)(b) then proceeded to punch him approximately ten more times. § 87(2)(b) did not see any officer pepper spray § 87(2)(b). When Sgt. Fabara told § 87(2)(b) she was under arrest, she told him "bullshit." As the officers left the scene, some kids threw soda cans and other items at the officers' vehicles.

Attempts to contact civilians

§ 87(2)(b) (telephone statement) (encl. 17A)

On May 12, 2011, § 87(2)(b) who is § 87(2)(b)'s neighbor, provided the following telephone statement about the incident.

On April 6, 2011 at approximately 1:30 p.m., § 87(2)(b) was arriving at her home located at § 87(2)(b), and saw that there were multiple police vehicles in front of her house, which is adjacent to § 87(2)(b)'s. § 87(2)(b) went inside her home, left her purse on a sofa and came back out of the house to watch what was happening. § 87(2)(b) remained inside her courtyard observing the incident but could not specify at what distance she was from § 87(2)(b) and the officers. § 87(2)(b) saw a female officer enter into § 87(2)(b)'s front yard. This officer ordered § 87(2)(b) to go inside the house. § 87(2)(b) responded that he was already in his house. The female officer threatened to arrest § 87(2)(b). § 87(2)(b) asked why he would be arrested if he had done nothing wrong. § 87(2)(b) who does not speak English, stated that she understands some English and was able to understand this conversation between § 87(2)(b) and the female officer.

Moments later, another female officer and one male officer entered § 87(2)(b)'s front yard. § 87(2)(b) refused to be handcuffed, so he held on to a fence. One of the female officers struck § 87(2)(b)'s hand once with a flashlight. The male officer grabbed § 87(2)(b) by the neck with one hand and pulled him backwards. The officers then brought § 87(2)(b) to the ground and handcuffed him. § 87(2)(b) did not witness when § 87(2)(b) and § 87(2)(b) were arrested.

§ 87(2)(b) stated that she was going to travel out of the country and could only provide a telephone statement at the moment, but assured the undersigned she would call back to set up an appointment for a statement. On May 23, 2011, the undersigned placed a call to § 87(2)(b) and received a continual ring without the possibility to leave a message. The same day the undersigned mailed a letter to § 87(2)(b) and the letter was not returned.

NYPD Statement(s):

Subject Officer: SERGEANT CARLOS FABARA

- § 87(2)(b)
- *On April 6, 2011, Sgt. Fabara worked from 12:50 p.m. to 9:47 p.m. He was assigned as the robbery supervisor. Sgt. Fabara worked with PO Keating, PO Frauenberg, PO Garcia and PO Stephen Ward. He was dressed in uniform and was assigned to a marked patrol car*

Memo Book

At 3:55 p.m., a burglary in progress at Lacombe Avenue and St. Lawrence Street. At 4:18 p.m., five people were arrested at the location, two by PO Garcia and three by PO Frauenberg. At 6:00 p.m., responded to North Central Bronx Hospital regarding two injured police officers, Sgt. Fabara and PO Keating.

CCRB Testimony

Sgt. Carlos Fabara was interviewed at the CCRB on June 14, 2011 (encl. 25A-B). On April 6, 2011, at approximately 3:55 p.m., Sgt. Fabara, PO Frauenberg, PO Keating, PO Garcia and PO Ward arrived at § 87(2)(b) in the Bronx in response to a burglary in progress. They arrested two males at the location in regard. While the officers effected these arrests and while they interviewed the complainant/victim of the burglary, several individuals, including § 87(2)(b) attempted to interfere by walking in between the officers and the two arrestees, and by yelling that the arrests were “bullshit.”

PO Frauenberg went to place § 87(2)(b) under arrest for refusing to disperse but he ran to his front yard, which was located nearby. PO Frauenberg followed § 87(2)(b) and told him he was under arrest. § 87(2)(b) got into a combative stand when PO Frauenberg attempted to handcuff him. Sgt. Fabara approached to assist PO Frauenberg. § 87(2)(b) held on to a fence and refused to give his arms to be handcuffed. Sgt. Fabara placed both of his hands on § 87(2)(b)'s shoulders and pulled him backwards. Sgt. Fabara did not hold § 87(2)(b) by his throat. § 87(2)(b) eventually let go of the fence and Sgt. Fabara was able to bring him to the ground. Sgt. Fabara did not recall seeing any other officers assisting with § 87(2)(b)'s arrest. While the officers placed the handcuffs on § 87(2)(b) approached screaming, “Get the fuck off my friend” and “You better let him go or I’m going to fuck you up.” § 87(2)(b) ripped his shirt open, bumped on his chest and threatened again to “fuck up” the officers. Sgt. Fabara ordered § 87(2)(b) to step back. The crowd began to intensify as they saw § 87(2)(b) yelling.

§ 87(2)(b)'s mother, § 87(2)(b) arrived and escorted § 87(2)(b) to her house, across the street from § 87(2)(b)'s. After § 87(2)(b) was handcuffed and placed in the patrol car, Sgt. Fabara went over to § 87(2)(b)'s house to arrest § 87(2)(b) who was inside the vestibule watching through the door. § 87(2)(b) stood by the front door and prevented Sgt. Fabara from reaching § 87(2)(b). Sgt. Fabara asked § 87(2)(b) to step aside but she refused. She grabbed Sgt. Fabara's arms as he tried to get around her. Meanwhile, § 87(2)(b) continued to make threats from inside the vestibule that he was going to “fuck up” the officers. PO Frauenberg and PO Keating approached to assist Sgt. Fabara. At this time, § 87(2)(b) rushed out of the vestibule swinging at Sgt. Fabara. Sgt. Fabara pepper sprayed § 87(2)(b) but the pepper spray had no effect on him as he continued charging and swinging at Sgt. Fabara. § 87(2)(b) struck Sgt. Fabara in the face. He also struck PO Keating. Sgt. Fabara and § 87(2)(b) fell on the ground in a struggle. Sgt. Fabara threw several punches at

§ 87(2)(b) as § 87(2)(b) punched him on his body. § 87(2)(b) resisted but Sgt. Fabara eventually handcuffed him. PO Keating and Sgt. Fabara sustained injuries from this incident which required medical attention. Sgt. Fabara limped for a couple of days after the incident and had body aches. Sgt. Fabara received medication for pain and a brace was placed on his leg. Sgt. Fabara did not know the extent of PO Keating's injuries.

Sgt. Fabara did not strike § 87(2)(b) with an asp and did not see PO Keating strike him with an asp. Sgt. Fabara did not recall § 87(2)(b) requesting his name and shield number or any other officers' names. Sgt. Fabara did not use obscene language during this incident and did not hear PO Frauenberg or PO Keating use obscene language. Sgt. Fabara did not punch or place his knees on § 87(2)(b). Sgt. Fabara did not see PO Frauenberg hit § 87(2)(b) with a flashlight.

Subject Officer: POLICE OFFICER JENNIFER FRAUENBERG

- § 87(2)(b).
- *On April 6, 2011, PO Frauenberg worked from 1:00 p.m. to 9:35 p.m. She was assigned to conditions with Sgt. Fabara, PO Keating, PO Garcia and PO Ward. PO Frauenberg was dressed in uniform and was assigned to a marked car.*

Memo Book

At 3:55 p.m., there was a call for a robbery in progress at Lacombe Avenue. At 4:18 p.m., three persons were arrested at the location. At 4:30 p.m., PO Frauenberg arrived at the precinct to process the arrest. At 5:00 p.m., a notification was made to § 87(2)(b), mother of arrestee § 87(2)(b) mother of § 87(2)(b) was also arrested. At 5:30 p.m., processed the online booking arrest sheets. At 9:30 p.m., printed photos. At 10:15 p.m., SPRINT printout, AIDED line of duty paperwork. At 11:05 p.m., transport one, At 1:05 a.m., end of tour.

CCRB Testimony

PO Jennifer Frauenberg was interviewed at the CCRB on June 14, 2011 (encl. 21A-B). Her statement was consistent with Sgt. Fabara's with the following exceptions. PO Frauenberg asked § 87(2)(b) multiple times to disperse but he continued to walk in front and in between the officers. PO Frauenberg told § 87(2)(b) she had given him several chances to disperse but he did not listen. She requested § 87(2)(b)'s identification to issue him a summons. Since, § 87(2)(b) did not have identification, PO Frauenberg placed § 87(2)(b) under arrest. As PO Frauenberg attempted to place § 87(2)(b) in handcuffs, he held on to a gate and used his body weight to push PO Frauenberg. PO Frauenberg held § 87(2)(b)'s hands and pulled them off the gate. PO Frauenberg did not strike § 87(2)(b) with a flashlight and did not have her flashlight out during this incident.

PO Keating and Sgt. Fabara approached to assist PO Frauenberg. PO Keating held one of § 87(2)(b)'s arms and pulled it off the gate. Sgt. Fabara placed both of his hands on § 87(2)(b)'s shoulders and tried to pull § 87(2)(b) off the gate also. All three officers brought § 87(2)(b) to the ground. Sgt. Fabara did not use a chokehold on § 87(2)(b). PO Frauenberg did not kick, punch or place her knee on § 87(2)(b). PO Garcia might have assisted in placing § 87(2)(b) in the vehicle after he was handcuffed. § 87(2)(b) came over flailing his arms, ripped his shirt and said he was going to "fuck up" the officers. He pointed his fist and advanced toward the officers.

More people began to come out of their houses. PO Frauenberg was not present when Sgt. Fabara and PO Keating went over to § 87(2)(b)'s house, so she did not see § 87(2)(b)'s initial interaction with the officers. When PO Frauenberg went over to assist Sgt. Fabara, § 87(2)(b) tried to interfere while § 87(2)(b) was being arrested. PO Frauenberg held § 87(2)(b).

§ 87(2)(b) to prevent her from interfering. PO Frauenberg did not curse at § 87(2)(b) and did not threaten to arrest her. PO Frauenberg did not hear PO Keating use any obscene language toward § 87(2)(b). PO Frauenberg did not see whether PO Keating used her asp to strike § 87(2)(b). PO Frauenberg did not have physical contact with § 87(2)(b) and did not see the physical force they used on § 87(2)(b). PO Frauenberg did not refuse to provide her name and shield number and this information was not requested from her.

Subject Officer: POLICE OFFICER DENISE KEATING

- § 87(2)(b).
- *On April 6, 2011, PO Keating worked from 1:00 p.m. to 9:35 p.m. She was assigned to conditions and worked with Sgt. Carlos Fabara, PO Jennifer Frauenberg, and PO Lenin Garcia. PO Keating was assigned to a marked vehicle and dressed in plainclothes.*

Memo Book

At 3:55 p.m., two males stopped at the corner of Lacombe Avenue for a robbery in progress. At 4:05 p.m., requested additional units due to a large crowd and a disorderly group of teens. At 4:18 p.m., five people under arrest at location by PO Frauenberg. At 4:30 p.m., arrived at the 43rd Precinct. At 6:00 p.m., relocated to North Central Bronx Hospital. At 6:30 p.m., arrived at North Central Bronx Hospital. At 8:30 p.m., relocate to the 46th Precinct. At 8:50 p.m., arrived at the 43rd Precinct. At 9:00 p.m., prepared line of duty paperwork. At 11:50 p.m., faxed line of duty paperwork.

CCRB Testimony

PO Keating was interviewed at the CCRB on June 14, 2011 (encl. 23A-B). Her statement was consistent with the above officer statements with the following exceptions. § 87(2)(b) refused to disperse stating he was not “fucking” going anywhere.

PO Keating went over to assist PO Frauenberg in handcuffing § 87(2)(b). PO Keating did not strike § 87(2)(b) with a flashlight and did not see PO Frauenberg strike him with a flashlight. Sgt. Fabara also went over to assist PO Frauenberg. PO Keating did not see Sgt. Fabara use a chokehold on § 87(2)(b). PO Keating did not place her knee on § 87(2)(b). § 87(2)(b) said he was not afraid of the “fucking cops.” PO Keating asked § 87(2)(b) to disperse. When § 87(2)(b) came out of the house swinging at the officers, he struck PO Keating with a closed fist on the side of her neck. PO Keating struck § 87(2)(b) on one of his legs with her asp multiple times. § 87(2)(b) never requested PO Keating’s name or shield number. PO Keating did not use obscene language. PO Keating went line of duty for three days after the incident.

Officers not interviewed

PO Garcia and PO Ward were not interviewed as it was determined that their statements would not have changed the dispositions of this case.

Medical Records (encl. 18A-L, 19A-O)

On § 87(2)(b), § 87(2)(b) and § 87(2)(b) went to § 87(2)(b) after suffering pain and bruising during this incident. § 87(2)(b) told medical staff she was having shoulder, neck, and back pain after struggling with police officers three days prior. The medical staff told § 87(2)(b) that her pain was likely muscular and that it was a “normal response to the encounter she had with police.”

§ 87(2)(b) presented abrasions in the face, and complained of neck, jaw, back, left arm, and right thigh pain. He showed mild swelling with abrasions on the right side of his forehead, mild tenderness on palpitation and tender abdomen.

On § 87(2)(b), § 87(2)(b) confirmed that there was no record of service for § 87(2)(b) for the date requested

NYPD Document(s)

Complaint Report (encl. 26A-B)

The Complaint Report stated that a sergeant responded to a radio run for a burglary on Lacombe Avenue. Upon apprehending the perpetrators a large crowd began gathering into the street and refused to disperse. § 87(2)(b) was told to disperse multiple times, failed to comply with instructions, and failed to produce ID while holding onto a metal gate refusing to give his hands. He tried to push officers away from him with his body weight. Upon handcuffing § 87(2)(b) ran across the street menacing the officers stating, "I'm going to fuck you up" while swinging his arms with closed fists, approaching officers from behind causing a large crowd to gather and public alarm. As a result, § 87(2)(b) was subdued with pepper spray, where he continued to resist arrest by punching PO Keating in the neck and Sgt. Fabara in the face causing substantial pain. § 87(2)(b) did try to prevent the officers from effecting a lawful arrest on her son by flailing arms, pushing the officers and screaming in the street causing a large crowd to form.

911 Communications CD

The first call to 911 was made by a female named § 87(2)(b) who stated that there were approximately four teens on top of the roof of a church and one on top of her roof. The caller requested police and disengaged. Minutes later, § 87(2)(b) called 911 again and stated that she was holding one of the teens at St. Lawrence Avenue and Lacombe Avenue.

A third call to 911 was made by an unidentified male who reported that teens were trespassing at his home and he was holding two at St. Lawrence Avenue and Lacombe Avenue. He requested police. The same male called and stated that there was "a big riot" after officers attempted to apprehend the individuals who were trespassing. He indicated that officers were "down" and needed assistance. Another male called 911 and requested police for two apprehended suspects who were trespassing and trying to break into his home.

There was also a call by a Fire Department dispatcher who indicated that there was a large group of people fighting at the location.

IAB Intake CD

The call made by § 87(2)(b) when she filed her complaint was not recorded by IAB.

SPRINTs (encl. 31A-H)

SPRINT # § 87(2)(b) indicated that at 3:28 p.m., a female caller phoned 911 to state that there were four teenagers on top of the roof of § 87(2)(b). At 3:45 p.m., another female caller stated she had one of the perpetrators stopped on the corner of St. Lawrence and Lacombe Avenue. A male stated police was needed at the location. At 4:13 p.m., a sergeant was notified. At 4:13 p.m., a patrol sergeant from the 43rd Precinct marked the job as other final disposition.

SPRINT # § 87(2)(b) indicated that at 3:55 p.m., two male Hispanic teens were at § 87(2)(b). At 3:59 p.m., a patrol sergeant marked the job as other final disposition. At 4:02 p.m., the location was changed to St. Lawrence Avenue and Lacombe Avenue. At 4:06 p.m., a patrol sergeant arrived on the scene. At 4:16 p.m., sector 43G responded to the scene. At 4:22

p.m. five persons were arrested on the scene. SPRINT # § 87(2)(b) was a duplicate of above SPRINTs.

Roll Call

Sgt. Fabara, and Officers Frauenberg, Keating, Garcia and Ward did not appear on the tour 1 and tour 2 roll calls received for this case.

Juvenile Report (encl. 29A-C)

§ 87(2)(b)'s juvenile report indicated that while the officers attempted to arrest § 87(2)(b), § 87(2)(b) threatened the officers stating, "I'm going to fuck you up." He swung his arms with closed fists and approached the officers from behind. § 87(2)(b) was told numerous times to leave and refused. Although he was subdued with pepper spray, he continued to resist by punching PO Keating in the neck and Sgt. Fabara in the face. § 87(2)(b) was charged with assaulting and menacing a police officer, obstruction of governmental administration, resisting arrest, and disorderly conduct.

Other Evidence

Transcript of video footage (encl. 14F)

On April 20, 2011, § 87(2)(b) sent footage of the incident via email. The video, which had no audio and lasted fifty-seven seconds, was captured via cell phone by an unknown civilian watching the incident from the front yard located two houses next to § 87(2)(b)'s.

- The video starts by showing Sgt. Fabara and PO Keating walking into § 87(2)(b)'s front yard, approaching her by the front door.
- § 87(2)(b) did not move away from the door as Sgt. Fabara tried to move her away. PO Frauenberg entered § 87(2)(b)'s front yard at this point.
- § 87(2)(b) exited from the house and swung at Sgt. Fabara. Sgt. Fabara took two quick steps backwards and swung back at § 87(2)(b) then tried to grab his arms.
- § 87(2)(b) grabbed Sgt. Fabara by his shirt and forcefully jolted him from side to side.
- Sgt. Fabara made multiple attempts to grab § 87(2)(b) by his arms. PO Keating attempted to assist Sgt. Fabara but § 87(2)(b) and Sgt. Fabara kept moving around in a struggle.
- The video did not show whether PO Keating struck § 87(2)(b) with an asp or whether Sgt. Fabara pepper sprayed § 87(2)(b).
- The video shows § 87(2)(b) being struck while on the ground. Sgt. Fabara brought § 87(2)(b) to the ground and handcuffed him. A third officer entered the front yard to assist.
- § 87(2)(b) ran toward § 87(2)(b) and Sgt. Fabara but PO Frauenberg prevented her from interfering.

§ 87(2)(b), § 87(2)(a) 160.50

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

Status of Civil Proceedings (encl. 37A-H)

- § 87(2)(b) filed a Notice of Claim with the City of New York on § 87(2)(b), claiming false arrest, unlawful imprisonment, malicious prosecution, assault, battery, violation of state and federal civil and constitutional rights, personal injuries, pain, suffering, embarrassment, humiliation, emotional and mental distress, and recklessness, and is seeking two million dollars as redress.

§ 87(2)(b)

■

■

Civilian(s) CCRB History (7A-8A)

- This is the first CCRB complaint filed by § 87(2)(b) and § 87(2)(b)

Subject Officer(s) CCRB History (4A-6A)

- Sgt. Fabara has been a member of the service for twelve years and there are ten substantiated CCRB allegations against him.
 - In CCRB case # 200508693, allegations of premises entered and/or searched, refusal to provide name and/or shield number, frisk, and an unspecified allegation, were substantiated against Sgt. Fabara, and he received instructions for the refusal to provide name and/or shield number allegation. He did not receive disciplinary action for the other three allegations given that the department declined to prosecute the case.
 - In CCRB case # 200511684, allegations of question and/or stopped and frisk were substantiated against Sgt. Fabara but no disciplinary action was taken as the department declined to prosecute the case.
 - In CCRB case # 200512992, allegations of question and/or stopped and frisk were substantiated against Sgt. Fabara and he received command discipline.
 - In CCRB case # 200606723, allegations of refusal to provide name and/or shield number and frisk were substantiated, one for which Sgt. Fabara received command discipline. The department was not able to take disciplinary action for the second allegation as they declined to prosecute the case.
- PO Keating has been a member of the service for three years and there are three substantiated CCRB allegations against her.
 - In CCRB case # 200916126, three allegations of Abuse of Authority for a stop, frisk, and issuance of a retaliatory summons were substantiated against PO Keating for which she received instructions as command discipline.
- PO Frauenberg has been a member of the service for three years and there are no substantiated CCRB allegations against her.

Conclusion

Identification of Subject Officer(s)

Sgt. Fabara, PO Frauenberg and PO Keating confirmed their involvement in this incident.

Allegations not pled

- § 87(2)(b) alleged that PO Frauenberg told her that if she did not shut “the fuck” up she would be arrested. The threat of arrest was a statement of fact as § 87(2)(b) was arrested during this incident, therefore the allegation was not pleaded.
- § 87(2)(b) alleged that Sgt. Fabara threw her against a police vehicle and handcuffed her. A physical force allegation was not pleaded as it was incident to § 87(2)(b)'s arrest.

Investigative Findings and Recommendations

Allegation A – Force: Sgt. Carlos Fabara used a chokehold against § 87(2)(b)

It is disputed whether Sgt. Fabara used a chokehold on § 87(2)(b)

§ 87(2)(b) alleged that while he held on to a fence in his front yard, Sgt. Fabara wrapped one of his arms around his throat and attempted to pull him off the fence to arrest him. Although § 87(2)(b) indicated that it was another Hispanic male officer besides Sgt. Fabara who held § 87(2)(b) by the throat, all other civilians and the officers agree that it was Sgt. Fabara who allegedly grabbed § 87(2)(b) by the throat or the shoulders. According to Sgt. Fabara, he placed his hands on § 87(2)(b)'s shoulders and pulled him off the fence but he never held § 87(2)(b) by the throat.

§ 87(2)(b), § 87(2)(g)

Allegation B – Force: PO Jennifer Frauenberg struck § 87(2)(b) with a flashlight.

It is disputed whether PO Frauenberg struck § 87(2)(b) on his hand with a flashlight.

The investigation could not find evidence to support § 87(2)(b)'s allegation that PO Frauenberg struck him with a flashlight. PO Frauenberg testified that she did not strike § 87(2)(b) and did not have a flashlight in her hand during this incident. The civilian witnesses for this case did not corroborate this allegation. § 87(2)(b)'s credibility was questionable given that his photos failed to show any bruising, lacerations or swelling on his hands. Moreover, there were no medical records available that could have documented an injury. It is therefore recommended that **allegation B be unfounded.**

Allegation C – Discourtesy: PO Denise Keating spoke obscenely and/or rudely to § 87(2)(b)

§ 87(2)(b) alleged PO Keating told him to get “the fuck” back when he approached as § 87(2)(b) was getting arrested. PO Keating did not admit using profanity.

In OATH's Police Department v. Dukes and Conway, it was established that “an officer may not use profanity gratuitously, or to intimidate or retaliate or to show a lack of respect for a civilian...on the other hand when an officer uses profanity in trying to secure a civilian's cooperation or for other legitimate law enforcement ends, the profanity may not rise to the level of misconduct” (encl.1A-B).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation D – Discourtesy: Sgt. Carlos Fabara spoke obscenely and/or rudely to § 87(2)(b) and § 87(2)(b)

Allegation E – Discourtesy: PO Denise Keating spoke obscenely and/or rudely to § 87(2)(b)

It is disputed whether PO Keating and Sgt. Fabara used obscene language toward § 87(2)(b). According to § 87(2)(b) when PO Keating and Sgt. Fabara entered her front yard, they approached her by the front door and asked her to move. § 87(2)(b) told the officers they were trespassing. PO Keating allegedly called § 87(2)(b) a “bitch” and pushed her away from the door. Sgt. Fabara also pushed § 87(2)(b) and allegedly told her, “Go, bitch, get the fuck off” and “shut the fuck up.” After Sgt. Fabara arrested § 87(2)(b) he allegedly called § 87(2)(b) “little motherfucker” then told him “shut the fuck up” inside a police car.

§ 87(2)(g)

Allegation F – Force: Sgt. Carlos Fabara used pepper spray against § 87(2)(b)

It is undisputed that § 87(2)(b) was pepper sprayed during this incident. Patrol Guide Procedure 212-95 states that an officer “may use pepper spray when he reasonably believes it is necessary to effect an arrest of a resisting suspect, for self-defense or defense of another from unlawful force...” (encl.2A-B).

Although § 87(2)(b) alleged it was PO Keating who pepper sprayed him, Sgt. Fabara stated it was him who pepper sprayed § 87(2)(b). PO Keating testified she did not see § 87(2)(b) being pepper sprayed.

§ 87(2)(b), § 87(2)(g)

Allegation G – Force: Sgt. Carlos Fabara used physical force against § 87(2)(b)

Allegation H – Force: PO Denise Keating struck § 87(2)(b) with an asp.

It is undisputed that Sgt. Fabara used physical force against § 87(2)(b) and that PO Keating struck § 87(2)(b) with an asp.

Patrol Guide Procedure 203-11, pertaining to the use of force, states that an officer can use “only that amount of force necessary to overcome resistance and effect an arrest” (encl.3A-B).

§ 87(2)(b) complained that Sgt. Fabara struck him on the chin and on the right side of the face seven times, and that an officer struck him with a baton. Footage of the incident proved that § 87(2)(b) assaulted Sgt. Fabara and PO Keating by swinging at them multiple times, striking Sgt. Fabara in the face and PO Keating in the neck. Sgt. Fabara initially pepper sprayed § 87(2)(b) to stop the assault, however, the pepper spray had no effect on § 87(2)(b) as he continued advancing and swinging toward Sgt. Fabara. Sgt. Fabara attempted to grab § 87(2)(b)'s arms, then swung back at § 87(2)(b) while continuing his attempt to grab § 87(2)(b).

§ 87(2)(b) s arms. PO Keating admitted that she struck § 87(2)(b) on his legs with her asp multiple times in an attempt to assist Sgt. Fabara subdue § 87(2)(b) s medical records specified mild swelling, tenderness and abrasions on the right side of his forehead. § 87(2)(b) s photos of these injuries showed minor bruising on the forehead. PO Keating went line of duty for three days after this incident as noted in her memo book.

§ 87(2)(g)

Allegation I – Discourtesy : PO Jennifer Frauenberg spoke obscenely and/or rudely to

§ 87(2)(b)

§ 87(2)(b) alleged that PO Frauenberg told her that if she did not “shut the fuck up” she would be arrested. PO Frauenberg testified that she did not use the alleged profanity.

In OATH’s Police Department v. Dukes and Conway, it was established that “an officer may not use profanity gratuitously, or to intimidate or retaliate or to show a lack of respect for a civilian...on the other hand, when an officer uses profanity in trying to secure a civilian’s cooperation or for other legitimate law enforcement ends, the profanity may not rise to the level of misconduct” (encl.1A-D).

§ 87(2)(b) attempted to run toward Sgt. Fabara and § 87(2)(b) when Sgt. Fabara was arresting § 87(2)(b). However, PO Frauenberg prevented her from interfering. § 87(2)(b)

§ 87(2)(b) admittedly yelled “what the fuck” at Sgt. Fabara as he struggled with § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

Allegation J – Abuse of Authority: Sgt. Carlos Fabara refused to provide his name and shield number to § 87(2)(b)

Allegation K – Abuse of Authority: PO Denise Keating refused to provide her name and shield number to § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

Team: _____

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Investigator: _____
Signature Print Date

Supervisor: _____

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